IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1731 of 1996

to

CIVIL REVISION APPLICATION No 1735 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ELECTION OFFICER & ORS.

Versus

DHARAMSHIBHAI MULJIBHAI

Appearance:

MR SN SHELAT, with MR NV ANJARIA for Petitioners in all the matters.

MR YOGESH THAKKAR, for the Respondent in all the matters.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/10/96

COMMON ORAL JUDGEMENT

1. Rule. Mr Yogesh Thakkar, learned Advocate waives service of notice of rule for the respondent in each

Revision Application. In view of the consent of learned counsel appearing for the parties and having regard to the urgency involved in the matters, these Revision Applications are taken up for final hearing today. As common questions of facts and law are involved in all these matters, they are disposed of by this common judgement.

2. The petitioners, who are authorised to hold election to elect members of Rohishala Gram Panchayat, Taluka Botad, Dist. Bhavnagar, have filed present Revision Applications challenging common judgement and order dated 22/10/1996 passed by the learned Joint District Judge, Bhavnagar in Civil Miscellaneous Appeals No. 192/96, 193/96, 194/96, 195/96 and 196/96, whereby the appeals filed by the petitioners are dismissed and mandatory ad interim injunction dated 18/10/1996 granted by the learned Civil Judge (S.D.) - Bhavnagar below applications exh.5 filed in Regular Civil Suits No. 737, 738, 739, 740 and 741, all of 1996, is confirmed.

3. The Election Commission, Gujarat State, issued Notification dated September 30, 1996 under section 15(1) of the Gujarat Panchayats Act, 1993 (for short 'the Act') for election of Members to Rohishala Gram Panchayat. The respondent No.1 of CRA NO.1731/96 i.e. Dharamshibhai Muljibhai filed his nomination from Ward No.8, the respondent of CRA NO. 1732/96 i.e. Ms. Pushpaben Raghavbhai filed her nomination from Ward No.3, the respondent of CRA NO. 1733/96 i.e. Chhelabhai Pahabhai filed his nomination from Ward No.5, the respondent of CRA NO. 1734/96 i.e. Liliben Govindbhai filed her nomination from Ward No.2,, whereas respondent of CRA NO. 1735/96 i.e. Nondhabhai Morabhai filed his nomination from Ward No.7, on October 07, 1996. The petitioner No.1, who is Returning Officer, on scrutiny of nomination papers, rejected their nomination papers on October 08, 1996. The respondents, therefore, feeling aggrieved, approached the petitioner No.2 i.e. the Collector and District Election Officer, Bhavnagar. It is the case of all the respondents that the petitioner No.2 refused to redress their grievance by informing that rejection of nomination papers by the Returning Officer was final and appeal was not competent. Therefore, the respondent in each Revision Application approached the Court of learned Civil Judge (S.D.) - Bhavnagar by filing Civil Suits No. 737/96 to 741/96 respectively and prayed to declare that the order rejecting their nomination papers by the Returning Officer was illegal, unconstitutional and malafide. Each respondent also prayed to declare that nomination papers submitted by him/her were valid. A

prayer to issue injunction directing the petitioners to allow the respective respondents to contest the election as member of Rohishala Gram Panchayat was also made. The respondent in each Revision Application submitted application exh.5 and claimed ad interim mandatory injunction directing the petitioners to permit him/her to contest the election after declaring that nomination papers presented by them were valid. The learned Civil Judge (S.D.) - Bhavnagar, by order dated October 18, 1996, declared that nomination papers presented by each respondent in these Revision Applications were valid and issued mandatory injunction directing the petitioners to permit each respondent of all these Revision Applications to contest the election of members to Rohishala Gram Panchayat. The order of the learned Civil Judge (S.D.) Bhavnagar was challenged by the petitioners before the District Court, at Bhavnagar by filing Civil Miscellaneous Appeals Nos. 192/96 to 196/96. The learned Joint District Judge, who heard the appeals, has by common judgment and order dated October 22, 1996, dismissed the appeals filed by the petitioners, giving rise to the present Revision Applications.

3. Mr. S.N.Shelat, learned counsel appearing for the petitioners, has submitted that, as election process has started, Civil Court has no jurisdiction to entertain suits filed by the respondents and therefore, the Revision Applications deserve to be accepted. It is submitted that rejection of nomination papers is a part of election process and even if there is any mistake committed by either the election authority or the Returning Officer, the said mistake can only amount to noncompliance with the provisions of the Act or the Rules made thereunder and therefore, mandatory injunction should not have been issued against the petitioners. What is emphasized by the learned counsel for the petitioners is that, by granting ad interim mandatory injunction, both the Courts have virtually allowed the suits without adjudicating the rival claims of the parties and therefore, the impugned judgement should be set aside. In support of his submissions, learned counsel has placed reliance on the decisions rendered in the following cases :

(i) N.P.PONNUSWAMI vs. THE RETURNING OFFICER, NAMAKKAL CONSTITUENCY, NAMAKKAL, SALEM DIST. AIR 1952 SC 64; (ii) S.T.MUTHUSAMI vs. K. NATARAJAN AND OTHERS, AIR 1988 SC 616; (iii) ISMAIL NOORMOHMAD MEHTA AND ORS. VS. STATE OF GUJARAT AND ORS. 1995(2) GLH 563; (iv) Special Civil Applications No. 12946/94 and other allied

matters decided by the Court (Coram : R.K.Abichandani, J.) on November 29, 1994; and (v) Civil Revision Application No.901 of 1995 (Coram: A.N.Divecha, J.) decided on May 24, 1995.

4. Mr. Yogesh Thakkar, learned counsel appearing for the respondents has pleaded that the object of the election is to hold free and fair election of the panchayats and as nomination papers of the respondents in each Revision Application have been rejected with a deliberate design, Civil Court was justified in issuing mandatory injunction in favour of the respondents in each Revision Applications and therefore, the Revision Applications should not be entertained. What is emphasized by the learned counsel for the respondents is that the impugned mandatory injunction has not the effect of arresting election process and as order rejecting nomination papers cannot be a subject matter of election petition under section 31 of the Act, the Revision Applications should be dismissed. In support of his submissions, learned counsel has placed reliance on the decisions in the following cases :

(i) LAJUBEN JERAMBHAI BHIL & ORS. VS AHMEDABAD MUNICIPAL CORPORATION & ORS. 1993 (1) GCD 433; (ii) VISHNUBHAI K. THAKER VS. DISTRICT REGISTRAR & ELECTION OFFICER FOR AGRICULTURAL PRODUCE MARKET COMMITTEE OF SIDHPUR AND ANR. 1996(2) GLH 196; (iii) SURINDER KAUR VS. STATE OF PUNJAB & ORS. JT 1996(3) SC 554; and (iv) DIGVIJAY MOTE VS. UNION OF INDIA AND OTHERS (1993) 4 SCC, 175.

5. In these Revision Applications, there is no dispute about the facts which have been set out above. The point which requires to be considered is whether Civil Court has jurisdiction to interfere with order of Returning Officer by which nomination papers of respondents in each Revision Applications were rejected before the declaration of the result of the election ?

6. After coming into force of the Act, the Government of Gujarat has made Gujarat Panchayats Election Rules, 1994 in exercise of the powers conferred by sub-section (5) of section-274 read with sub-section (2) of section-51 of the Gujarat Panchayats Act, 1993. The procedures regarding election of Members to

Panchayats are elaborately laid down in the Rules. Rules 12 to 16 of Gujarat Panchayat Election Rules, 1994 deal with subject matters, such as presentation of nomination papers and requirement for valid nomination, deposit on nomination, return or forfeiture of deposits, scrutiny of nomination papers and list of validly nominated candidates etc. Rule 15, sub-rule (8) of the Gujarat Panchayat Election Rules, 1994 provides that the decision of the Returning Officer regarding acceptance or rejection of the nomination papers shall be final. Section - 31 of the Act deals with determination of validity of election and provides as under :

"31. Determination of validity of election, inquiry by Judge and procedure :-

(1) If the validity of any election of a member of a panchayat is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may, at any time within fifteen days after the date of the declaration of the results of the election present an election petition to the Civil Judge (J.D.) and, if there be no Civil Judge (J.D.), then to the Civil Judge (S.D.), (hereinafter referred to as 'the Judge') having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such questions.

(2) A petitioner shall not join as respondents to his election petition persons except those mentioned in the following clauses, namely :-

(a) Where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates, claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates, and,

(b) any other candidate against whom allegations of any corrupt practice are made in the election petition.

(3) An inquiry shall thereupon be held by the Judge and he may after such inquiry as he deems necessary, pass an order, confirming or amending the declared result, or setting the election aside. For the purpose of the said inquiry, the said Judge may exercise all the powers of a civil court, and his decision shall be conclusive.

(4) If the validity of the election is brought in question only on the ground of any error by the officer or officers charged with carrying out the rules made under section 274 or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

7. Having regard to the scheme contemplated by the Act and Gujarat Panchayat Election Rules, 1994, there is no manner of doubt that the Returning Officer is responsible for the proper conduct of the election under the Rules. Even if there is any mistake committed by either the election authority or the returning officer in acceptance or rejection of nomination papers, the said mistake can only amount to noncompliance with the provisions of the Act or Rules made thereunder. It is clear from section - 31 of the Act that a complete machinery has been set up for the decision on election disputes relating to a Panchayat. Every action amounting to noncompliance with the provisions of the Act and the Rules made thereunder, would not automatically vitiate an election. It is only when the election court, on a consideration of entire material placed before it at the trial of an election petition, comes to the conclusion that the error by the officer charged with carrying out the rules made under section 274 or an irregularity or informality is caused corruptly, the election of the returned candidate can be set aside. In view of the explanation appended to sub-section (4) of section 31 of the Act, it is evident that the expression 'error' by the officer does not include any breach or any omission to carry out or any noncompliance with the provisions of the Act or the Rules made thereunder, whereby the result of the election has not been materially affected. As a matter of general principle, interference with an election process between the commencement of such process and the stage of declaration of the result by a court, would not ordinarily be proper. Right to vote or stand for election to the office of members of the panchayat is a creature of the statute i.e. Gujarat Panchayats Act, 1993 and it must be subject to the limitations imposed by it. Accordingly, the election to the office of a member

of panchayat can be challenged only according to the procedure prescribed by the Act and that is, by means of an election petition presented in accordance with the provisions of the Act and in no other way. The act provides only for one remedy, that remedy being an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. This aspect is emphasized and made beyond pale of any controversy by the Constitution (73rd Amendment Act, 1992), which has introduced Art. 243(o) in Part-IX of the Constitution of India. It reads as under :

243(O). Bar to interference by courts in electoral matters :

Notwithstanding anything in this constitution, --

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to the made under Art. 243 (k), shall not be called in question in any court;

(b) No election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a state.

8. At this stage, it would be advantageous to refer to relevant judgements on the point. In N.P.PONNUSWAMI (supra) dealing with the question that whether a writ petition was a proper remedy which can be availed of by a person aggrieved by any irregularity in the conduct of election before the result of the election is declared, Supreme Court, on consideration of a nature of litigation in respect of elections observed thus, at page - 70 :

"Now, the main controversy in this appeal centers round the meaning of the words 'no election' shall be called in question except by an election petition in Art. 329 (b), and the point to be decided is whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, 'no election shall be called in question'. The appellant's case is that

questioning something which has happened before a candidate is declared elected is not the same thing as questioning an election, and the arguments advanced on his behalf in support of this construction were these :

(1) That the word 'election' as used in Art. 329 (b) means what it normally and etymologically means, namely, the result of polling or the final selection of a candidate;

(2) That the fact that an election petition can be filed only after polling is over or after a candidate is declared elected and what is normally called in question by such petition is the final result bears out the contention that the word 'election' can have no other meaning in Art. 329 (b) than the result of polling or the final selection of a candidate;

(3) That the words 'arising out of or in connection with' which are used in Art. 324 (1) and the words 'with respect to all matters relating to, or in connection with' which are used in Arts. 327 and 328 show that the framers of the Constitution knew that it was necessary to use different language when referring respectively to matters which happen prior to and after the result of polling, and if they had intended to include the rejection of a nomination paper within the ambit of the prohibition contained in Art. 329(b) they would have used similar language in that article, and,

(4) That the action of the Returning Officer in rejecting a nomination paper can be questioned before the High Court under Art. 226 of the Constitution for the following reasons :Scrutiny of nomination papers and their rejection are provided for in s. 36, Representation of the Peoples Act, 1951. Parliament has made this provision in exercise of the powers conferred on it by Art. 327 of the Constitution which is 'subject to the provisions of the Constitution'. Therefore, the action of the Returning Officer is subject to the extraordinary jurisdiction of the High Court under Art. 226.

These arguments appear at first sight to be quite impressive, but in my opinion, there are weighter and basically more important arguments

in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word 'election' in Art. 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In Srinivasalu v. Kuppaswami AIR (15) 1928 MAD. 258 P.255, the learned Judge of Madras High Court after examining the question, expressed the opinion that the term 'election' may be taken to embrace the whole procedure whereby an elected member is returned, whether or not it be found necessary to take a poll. With this view, my brother Mahajan, J. expressed his agreement in Sat Narain v. Hanuman Parshad AIR (33) 1946 LAH. 85, and I also find myself in agreement with it. It seems to me that the word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression 'conduct of election' in Art. 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Art. 329(b). That the word 'election' bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins.

The discussion in this passage makes it clear that the word 'election' can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process."

9. Following the above decision in N.P.PONNUSWAMI (supra), the Supreme Court in Nanhoo Mal vs Hiramal AIR

1975 SC 2140 held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. Accordingly, the Supreme Court held that the election to the office of the President of the Municipal Board could be challenged only according to the procedure prescribed by persons in accordance with the provisions of that Act and in no other way. The Supreme Court further held that the said Act provides only for one remedy, and that remedy was election petition to be presented after the election was over and there was no other remedy provided at any intermediate stage. Referring to the decisions in N.P.PONNUSWAMI case (supra), the Supreme Court observed in the above decision at pages 243 - 244, thus, :

"These conclusions follow from the decision of this court in Ponnuswami's case (supra) in its application to the facts of this case. But the conclusions above stated were arrived at without taking the provisions of Art. 329 into account. The provisions of Art. 329 are relevant only to the extent that even the remedy under Article 226 of the Constitution is barred as a result of the provisions. But once the legal effect above set forth of the provision of law which are concerned with is taken into account, there is no room for the High Courts to interfere in exercise of their powers under Article 226 of the Constitution. Whether there can be any extraordinary circumstances in which the High Court could exercise their power under Article 226 of the Constitution in relation to elections it is not now necessary to consider. All the considerations applied in coming to the conclusion that elections to the legislatures should not be delayed or protracted by the interference of Courts at any intermediate stage before the results of the election are over apply with equal force to elections to local bodies" (emphasis supplied).

In the above passage, the Supreme Court clarified that the conclusions in N.P.Ponnuswami's case AIR 1952 SC 64) (supra) had been arrived at without taking the provisions of Article 329 of the Constitution into account and that the provisions of Article 329 of the Constitution were relevant only to the extent that even the remedy under Article 226 of the Constitution was barred as a result of the provisions. Earlier in the course of the decision in Nanhoo Mal's case (1976 (1) SCR

809 : AIR 1975 SC 2140) (supra), the Supreme Court observed at page 811 (of SCR) : (at p. 2141 of AIR) :

" After the decision of this Court in N.P.Ponnuswami v. Returning Officer, Namakkal Constituency (AIR 1952 SC 64) there is hardly any room for courts to entertain applications under Article 226 of the Constitution in matters relating to elections."

9. In the case of S.T.MUTHUSAMI (supra), the appellant, respondent No.1, respondent No.6 and two others were nominated as candidates at the election held to the office of the Chairman, Panchayat Union, in the State of Tamilnadu. The date of the scrutiny of the nomination papers was January 31, 1986 and the last date for withdrawal of nominations was February 03, 1986. The election was to take place on February 23, 1986. On the date of scrutiny of the nomination papers, the nomination papers of the appellant, respondent no.1 and respondent no.6 and of two others were found to be valid by the Returning Officer. As regards the allotment of symbols to the candidates, the order made by the State Government directed that the Returning Officer shall assign to the candidates the set up by the National and States Parties, the symbols reserved for the purpose by the Chief Election Commissioner. Accepting the first choice of each of them, the Returning Officer allotted the symbols to the appellant and respondent No.6. The Returning Officer then proceeded to publish the list of candidates nominated with the symbols allotted to them. On representation being made, the Returning Officer issued an Errata Notification assigning the symbols. This action of the Returning Officer was challenged by the respondent No.1 by filing a petition in the High Court of Madras under Article 226 of the Constitution of India, contending that issue of the Errata notification was an abuse of power committed on extraneous and irrelevant consideration and there was undue interference with the actual conduct of the election. He therefore prayed before the High Court that the Errata notification be quashed and the election be directed to be proceeded with in accordance with the earlier notification. The learned Single Judge dismissed the writ petition. Accordingly, by the order of the learned Single Judge, the respondent No.1 filed an appeal in High Court of Madras. The Division Bench which heard the appeal, allowed it. The Supreme Court, while allowing the appeal and setting aside the judgement of Division Bench, has held as under:

"It is not appropriate for the High Court to interfere with an election process at intermediate stage after the commencement of the election process and before the declaration of the result of the election. held for the purpose of filing a vacancy in the office of the Chairman of Panchayat Union under the provisions of the Tamilnadu Panchayats Act, 1958 on the ground that there was an error in the matter of allotment of symbols to the candidates contesting at such elections. The parties who are aggrieved by the result of the election can question the validity of election by an election petition which is an effective alternative remedy."

10. In the case of Ismail Noormohmad Mehta (supra), the petition under Article 226 challenging delimitation of the wards of municipality was filed. The Court refused to entertain the petition in view of the bar created by clause (b) of Article 243 - ZG, which provides that no election to municipality shall be called in question except by an election petition. In a Civil Revision Application No.901/95, the mandatory injunction was granted by the learned Civil Judge, restraining the defendants of that case from rejecting the plaintiffs' nomination papers with respect to the concerned panchayat election. The Court while setting aside the mandatory ad interim injunction has held that no proceedings except by way of election petition would be competent once the election process has begun.

11. In the case of Lajuben Jerambhai Bhil (supra), the petitioners desired to contest the reserved seat elections to Ahmedabad Municipal Corporation, which was scheduled to be held on January 24, 1993. However, their nomination papers were not accepted for the reserved seats and were accepted for the general seats. Therefore, a petition was filed in the High Court. After examining peculiar facts of the case, the Court has held that if the question of rejection of nomination papers is such a question which can be resolved in proper time by the High Court without disturbing the election process, the Court should try to see that it is resolved so that on that question, the entire election may not be put to any jeopardy. In the said case, the Court was concerned with the jurisdiction of the High Court under Art. 226 of the Constitution of India and it had no occasion to deal with jurisdiction of Civil Court to interfere with election matters at intermediate stage. Even in the said case, it is held that once the election process has

started, it should be allowed to be completed without any interference by the Court and ordinarily, the remedy is by way of election petition challenging the election. As noted in the decision rendered in Special Civil Applications No. 12946/94 and other allied matters decided by the court (Coram: R.K.Abichandani, J.) on 29.11.1994, the decision in LAJUBEN's case was rendered prior to the amendment in the Constitution. In my view, the decision rendered in Lajuben's case rests on its peculiar facts and is of no avail to the respondents.

12. In the case of Vishnubhai K. Thaker (supra), the Court was concerned with powers of High Court under Art. 226 of the Constitution of India and not with powers of Civil Court under section 9 of the Code of Civil Procedure, 1908 to deal with election matters at intermediate stage. Having regard to the different provisions of Gujarat Agriculture Produce Market Committee Act, 1963 and the Rules framed thereunder, the Court found that rejection of nomination of the petitioners was patently illegal and it was possible to rectify the mistake without arresting the election process. Under the circumstances, while exercising extra ordinary jurisdiction under Art. 226 of the Constitution, necessary directions were given by the High Court. In the facts of the present case, Article 243(O)(b) of the Constitution of India expressly bars interference of Court relating to electoral matters of Panchayats. In my opinion, in view of the above legal position, this decision is also of no assistance to the respondents.

13. Again in the case of Surinder Kaur (supra), the appellant was Sarpanch for 15 years of the Gram Panchayat. The poll of the office of Sarpanch was to be held on January 18, 1993 and nomination papers was to be filed on January 17, 1993. When the appellant went to submit nomination papers, the 7th respondent forcibly snatched away the nomination papers and torn them off. Inspite of her complaint to the police, they did not pay any heed nor acted on her complaint. Consequently, the appellant was constrained to complain to the Sub-Divisional Magistrate. Since the election was to take place on January 18, 1993, she had to approach the High Court and file the writ petition. Stay was granted and it was communicated telegraphically. However, the poll was closed at 4.00 p.m. In these set of facts, the Supreme Court interfered as it was found that the appellant was entitled to file an election petition and was unlawfully prevented from contesting the election. In my view, this decision is also of no help to the

respondent, because there also, the question is not considered by the Supreme Court with reference to the powers of of Civil Courts to deal with electoral matters at the intermediate stage.

14. It is contended by the learned Counsel for the respondents that the decision of the Election Commission can be the subject matter of review under Articles 14, 19 and 32 of the Constitution of India. In support of this contention, the learned Counsel has relied on the decision in the case of DIGVIJay MOTE vs. UNION OF INDIA AND OTHERS, (1993) 4 SCC, 175, wherein the Supreme Court has observed that "the scope of judicial review will depend on the facts and circumstances of the case". In the present case, when Article 243-O(b) of the Constitution in no uncertain terms bars interference of court in electoral matters, it cannot be held that the Civil Court had jurisdiction to sit in appeal over the decision of the Election Officer, rejecting the nomination papers of the respondents. The decision of the Supreme Court in DIGVIJAY MOTE's case (supra) will be of any help to the respondents.

15. From the above discussion, it is evident that election process having been already commenced, such process cannot be called in question, except by an election petition under section 31 of the Act, and that too in the manner and on the grounds provided therein. In that context and set of expression 'no election' appearing in Article 243-O(b), the law made by the State Legislator will be the only source of calling in question an election of a member to any panchayat. As the election is not over, the question whether nomination papers presented by respondents were validly rejected or not, should not have been gone into by Civil Court at all in view of the provisions of section 31 of the Act read with Art. 243-O of the Constitution. The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. It is now well recognised that where a right is created by a statute which gives a special remedy for enforcing it, the remedy provided in that statute only must be availed of. There are three classes of cases in which a right and/or liability may be established founded upon the statute. One is, where there was a right existing at common law and that right is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there unless the statute contains words which expressly or by necessary implication excludes the common law remedy, the party

suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives a right to sue merely, but provides no particular form of remedy; there the party can only proceed by action at common law. But, there is a third class viz. where the right not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. The law of election in this country does not contemplate that there should be two attacks one before the election and another after election on matters connected with election proceedings. In my view, to affirm such a position would be contrary to the scheme of the Gujarat Panchayats Act, 1993 and Gujarat Panchayats Election Rules, 1994. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought at an intermediate stage before any Court. Therefore, the Civil Court had no jurisdiction at all to examine the validity of the order passed by the returning officer rejecting nomination papers of the respondents. The only remedy available to the respondents was to file election petition under Section 31 of the Act after the election was over.

16. In my view, the learned Civil Judge (S.D.) Bhavnagar acted without jurisdiction in issuing mandatory injunction directing the petitioners to permit respondents in each Revision Application to contest the election. The only jurisdiction which can be exercised by a Civil Court is clearly and specifically marked out in section 31 of the Act. As the order passed by the learned Civil Judge (S.D.) granting mandatory injunction is without jurisdiction, the same deserves to be set aside. For the same reason, the appellate order will have also to be quashed and set aside.

17. Even otherwise, the mandatory injunction has the effect of allowing the whole suit at an interim stage without adjudicating the claims raised in the suit. It is well settled that normally, no Court should grant relief as an interim relief which virtually allows the proceedings pending before it. Therefore, even if it is assumed that Civil Court had jurisdiction to deal with election matters, at an intermediate stage, I am of the opinion that the learned Civil Judge (S.D.) has exercised jurisdiction with material irregularity, and if the order

is allowed to stand, it would cause irreversible prejudice to the petitioners. On this ground also, the impugned judgements are liable to be set aside.

18. For the foregoing reasons, the Revision Applications succeed. The impugned judgement and order dated October 22, 1996 passed by the learned Joint District Judge, Bhavnagar in Civil Miscellaneous Appeals No. 192/96 to 196/96 confirming the ad-interim relief in the nature of mandatory injunction dated October 18, 1996 granted by the learned Civil Judge (S.D.) - Bhavnagar in Regular Civil Suits No. 737/96 to 741/96 are set aside and quashed. Rule is made absolute with no orders as to costs in each Revision Application.

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abraham.